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to contract but prevented her from conveying without the written consent of her husband. The plaintiff had constructive notice of the extent of the estate and that the woman was married. The defendant set this up as an equitable defence to an action for breach of contract. The court points out that although under former equitable procedure the plaintiff would have no standing because of the constructive notice of the impossibility of specific performance, this was no longer an obstacle under modern procedure. Moreover, the action in the principal case was brought in legal form for breach of contract, and the equitable rules do not govern such actions under the combined procedure any more than they did at common law.

STATUTORY HEIRS.—An interesting and novel question was presented in the recent case of Matter of Leslie (N. Y. Surrogate's Ct., N. Y. Co. 1915) 92 Misc. 662, 156 N. Y. Supp. 346, in which Surrogate Fowler of New York County held that it was beyond the power of the legislature to create an heir, and that a statute purporting to do so[1] operated only as an assignment of the state's right of escheat. The Surrogate assumed it to be settled law that the state is not entitled to contest the probate of a will in order to establish its right to caducary succession and therefore held that the statutory heir, as assignee of this right, was in no better position, and was concluded by the probate to which he had not been cited.

Although its right of escheat does not constitute the state an heir nor entitle it to be cited to the probate of a will,[2] it has been held to be such an interest in the estate as to justify the sovereign in contesting probate in order to establish intestacy and secure caducary succession.[3] The principal case, therefore, seems a narrow and doubtful decision even if the Surrogate's interpretation of the legal effect of the statute be accepted, for the assignee of the right of escheat should be in as good a position in regard to the probate of a will as his assignor, the state.

Despite dicta from various eminent judges, it seems to be fairly well settled in this country that there are no extra-constitutional limitations on legislative power.[4] But even if there were some sub-

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[1]N. Y. Consol. Laws, Ch. 13; Laws of 1909, Ch. 18, § 91. *"Relatives of husband or wife.* When the inheritance shall have come to the intestate from a deceased husband or wife, as the case may be, and there be no person entitled to inherit under any of the preceding sections, then such real property of such intestate shall descend to the heirs of such deceased husband or wife, as the case may be, and the persons entitled, under the provisions of this section, to inherit such real property, shall be deemed to be the heirs of such intestate."

[2]State *v.* Ames (1871) 23 La. Ann. 69.

[3]State *v.* Lancaster (1908) 119 Tenn. 638, 105 S. W. 858; see State *v.* Superior Ct. of Sacramento County (1905) 148 Cal. 55, 82 Pac. 672; Davis *v.* Davis & Davis (1824) 2 Add. Eccl. 223. In the jurisdiction of the principal case there is an early decision in which the right of the state to contest probate under such circumstances was not questioned although the will was upheld. Combault *v.* Public Administrator (N. Y. 1859) 4 Bradf. Surr. 226; but see Hopf *v.* State (1888) 72 Tex. 281, 10 S. W. 589.

[4]Cooley, Constitutional Limitations (7th ed.) 232-237; 29 Harvard Law Rev., 521. The only authority cited in the principal case for the invalidity of constitutional statutes opposed to natural right is the ancient English case of Day *v.* Savadge, Hob. 85, 87, which is admittedly no longer law in England. 1 Bl., Comm., *160.

jects so grounded in the law of nature as to be beyond statutory control, it is submitted that there is nothing so inherently sacred about the law of descent and distribution as to make the creation of an heir a legislative impossibility. The principal case agrees with Glanville that this rests exclusively in the hands of the Almighty.[5] Yet it has been said that no two nations have the same laws of descent,[6] and if they were of divine origin it seems strange that they should not be of universal application. For example, it is well known that the Roman law conceived of an heir as a continuation of the personality of the ancestor, succeeding not only to all his assets but also to all his liabilities,[7] so that the succession has been aptly compared to a corporation sole.[8] It is therefore apparent that the heir under the Roman law was a very different person from the heir as constituted by the common law of England, who took only his ancestor's realty, but took it free of the ancestor's debts. But not only do these two great systems of jurisprudence differ widely as to this matter, which is contended to be fixed by nature and by the laws of God, but even in England the canons of descent differed as between the sexes,[9] and also in different sections of the country. Thus, generally the eldest male was the heir,[10] but where the custom of borough English prevailed the inheritance passed to the youngest son,[11] while in Kent the rule of gavel-kind gave it to all the sons.[12] It is therefore possible to imagine a case in which the lands of an intestate would pass in distinct parcels to twelve different persons, each being the heir at law as to that particular part.[13]

In the United States the whole subject of descent and distribution is regulated by elaborate statutory provisions in the several states,[14] which in some cases permit the creation of an heir by declaration in writing suitably acknowledged.[15] In most states there is legislation purporting to constitute statutory heirs. For instance, an illegitimate child, though *filius nullius* and incapable of being an heir at common law,[16] is by statute in many states made heir to his mother,[17] and in

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[5]"God only, and not man, can make an heir at law." Glanville VII, 1.

[6]4 Kent. Comm., *376.

[7]Maine, Ancient Law (3rd Amer. Ed.) 176.

[8]*Ibid.*, 180, 181. It is interesting to speculate as to how far the religious need of descendants to perpetuate the family sacrifices and worship influenced the Roman law of descent and of testamentary disposition. A Roman heir, with all his assets and liabilities under the *Patria Potestas*, could, at a comparatively early period, be created either by a form of investiture, analogous to a sale of the *familia*, or by will. *Ibid.*, 185-198.

[9]2 Bl., Comm., *214. This difference consisted in the application of the rule of primogeniture among males and of coparcencary among females.

[10]*Ibid.*

[11]2 Pollock & Maitland, History of English Law (2nd ed.) 279.

[12]*Ibid.*, 271.

[13]*Ibid.* The case would occur if the intestate had lands inherited from each of his four grandparents, subject to each of the three rules: primogeniture, borough English and gavel-kind.

[14]Stimson, American Statute Law (1886) § 3000 *et seq.*

[15]*Ibid.*, § 3035.

[16]1 Bl., Comm., *247.

[17]Stimson, American Statute Law, § 3151.

certain cases is even permitted to inherit from his father.[18] So also, adopted children are, in most states, made, by statute, heir to the adoptive parent.[19] Nor can these enactments be interpreted, like that in the principal case, as mere assignments of the state's rights of escheat, since they frequently provide that the statutory heir shall inherit share and share alike with the natural heirs of the intestate,[20] in which case, there is of course, no right of escheat to be assigned. In view, therefore, of the differences which from the earliest days have marked the rules of descent, not only as between different countries, but also within the realm of England, and which now distinguish our American statutory laws of inheritance, it is difficult to sustain the elaborate and artificial interpretation placed upon the statute under consideration in the principal case. It is submitted that statutory heirs should be accorded all the rights, including citation to the probate of a will, which the law confers upon those heirs who have been said to be created by natural law.[21]

VALIDITY OF CORPORATIONS FORMED THROUGH DUMMIES BY OTHER CORPORATIONS.—In view of the prevalence of the practice among corporations of organizing subsidiaries, and the frequency with which dummies are used in the creation of these and other corporations, it is surprising how little the validity of such corporate organizations has been adjudicated. While every corporation exists by virtue of the action of the state creating it, which may vary with every jurisdiction and every corporation therein, nevertheless in all the states of this country the legislatures have adopted general corporation laws substantially similar in character. Some of these authorize any persons, not less than a specified number, to form a corporation, but many others in addition require a stock subscription by the incorporators.[1] Where the latter form of legislation prevails, the creation of a corporation by other corporations would immediately raise the question of the right of one corporation to hold stock in another.

In this country it used to be generally regarded as *ultra vires* for one private corporation to acquire the stock of another,[2] except pos-

[18] *Ibid.*, § 3152. *E. g.* New Mexico Statutes (Codification 1915) § 1850.

[19] *Ibid.*, § 6847.

[20] N. Y. Consol. Laws, Ch. 14; Laws of 1909, Ch. 19, § 114; Mass. Rev. Laws (1902) Ch. 154, § 7; Utah Compiled Laws (1907) § 9.

[21] *Cf.* Matter of Gregory (N. Y. 1896) 15 Misc. 407, 37 N. Y. Supp. 925, where the right of a statutory heir to contest probate of a will was not questioned, though the will was sustained. See also, Hayden *v.* Barrett (1899) 172 Mass. 412, 52 N. E. 530; Buckley *v.* Frasier (1890) 153 Mass. 525, 57 N. E. 768; Butterfield *v.* Sawyer (1900) 187 Ill. 598, 58 N. E. 602; Flannigan *v.* Howard (1902) 200 Ill. 396, 65 N. E. 782.

[1] 1 Morawetz, Private Corporations, § 27; 1 Thompson, Corporations (2nd ed.) § 171. An example of the first class is Ohio Gen. Code, § 8625-7; and of the second, N. Y. Cons. Laws, c. 4, § 2.

[2] Central R. R. *v.* Collins (1869) 40 Ga. 582; Railway Co. *v.* Iron Co. (1888) 46 Ohio 44; Martin *v.* Ohio Stove Co. (1898) 78 Ill. App. 105. *Contra,* Booth *v.* Robinson (1881) 55 Md. 419. If a corporation could not buy stock, its subscription would, of course, be *ultra vires.* Knowles *v.* Sandercock (1895) 107 Cal. 629, 40 Pac. 1047; Peshtigo Co. *v.* Gt. Western Tel. Co. (1893) 50 Ill. App. 624; Nassau Bank *v.* Jones (1889) 95 N. Y. 115; Mechanics etc. Assn. *v.* Meriden Agency Co. (1855) 24 Conn. 159.